

Procedure are not appealable by the 2nd clause of s. 588, but only orders striking out or adding the name of any person as plaintiff or defendant. As the order against which this appeal has been preferred does not come within the purview of this clause, we think there is no appeal. The appeal is rejected with costs.

K. M. C.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

SHARAT SUNDARI DABIA (DEFENDANT) v. BHOBO PERSHAD KHAN
CHOWDHURI (MINOR) BY HIS MOTHER RAM SUKHI DABIA
AND ANOTHER (PLAINTIFFS).*

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April 14.

Limitation Act, 1877, Art. 144—Ijardar, Dispossession of—Adverse possession—Zemindar, Suit by.

Possession taken by a trespasser during the currency of an *ijara* lease does not become adverse to the zemindar (lessor) until upon the expiration of the term, and a suit for possession may be brought within 12 years of that date under the provisions of Art. 144 of the Limitation Act.

Krishna Gobind Dhur v. Hari Churn Dhur (1) followed.

THIS suit which was one for recovery of possession of an 8 anna share of two mouzahs, was instituted on the 5th Aughran 1291 B.S. (19th November 1884). It was alleged that the plaintiff's predecessors in title had granted an *ijara* of the property to one Mr. Brodic, who remained in possession till 1285 B.S., (1878) the end of the term of his lease, and that ever since the month of Joisto 1286 B.S. (May—June 1879) the plaintiff had been wrongfully kept out of the land. The defendant, among other things, pleaded that she having been in exclusive possession of the land since the month of Joisto 1276 B.S., (May—June 1869) the plaintiff's claim, if any, was barred by lapse of time.

The Subordinate Judge decreed the suit, and held upon the authorities of *Krishna Gobind-Dhur v. Hari Churn Dhur* (1) and *Woomesh Chunder Goopto v. Raj Narain Roy* (2), that

* Appeal from Appellate Decree No. 2275 of 1885, against the decree of J. F. Stevens, Esq., Judge of Mymensingh, dated the 18th of August 1885, affirming the decree of Baboo Rajendra Coomar Bose, Subordinate Judge of that district, dated the 30th of March 1885.

(1) 1. L. R., 9 Calc., 367.

(2) 10 W. R., 15.

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although the plaintiff's *ijardar* had been dispossessed by the defendant in 1278 B.S., (1871) the limitation as against the plaintiff would not begin to run until upon the expiration of the *ijara* lease. The judge confirmed the decree.

The defendant appealed to the High Court.

Baboo *Srinath Das* and Baboo *Kishori Lall Sircar* for the appellant.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Girija Sunkar Mozumdar* for the respondent.

The judgment the Court (MITTER and GRANT, JJ.) was delivered by

MITTER, J.—The plaintiff seeks to recover possession of an 8-anna share of two mouzahs, alleging that the said share appertains to his zemindari No. 6100, and that the defendant, who is the owner of the other 8 annas, is in wrongful possession of the whole. He further alleges that his zemindari was let out in *ijara*; that the *ijara* lease terminated in the year 1285; and that on the termination of that lease he was dispossessed from the disputed land in the beginning of 1286.

The defendant denied the plaintiff's allegation that he was dispossessed in 1286, and alleged that these two mouzahs constituted the holding of one Goluck in the defendant's zemindari, and that in execution of a rent decree this tenure was sold and purchased by him, the defendant, in the year 1276. He therefore contended that the plaintiff's suit was barred by limitation, and that he was entitled to retain possession of the sixteen annas of the lands of these two mouzahs.

The lower Courts decreed the plaintiff's claim. They found that the 8 annas share of the two mouzahs appertains to the plaintiff's zemindari No. 6100, but they were of opinion that the dispossession of the plaintiff's *ijardar* took place in the year 1278, when the plaintiff's zemindari was in *ijara* to Mr. Brodie, and that the *ijara* terminated in the year 1285. They accordingly decreed the suit, holding that, as it was brought within twelve years of the termination of that *ijara*, at which period the plaintiff's cause of action accrued, it was not barred.

It is contended before us that this decision is erroneous in law; that the cause of action in this case accrued to the plaintiff when possession was taken by the defendant in the year 1278, and that as the present suit was not brought within twelve years of that date it was barred by limitation. It was contended, on the other hand, that the dispossession of the *ijardar* was not the dispossession of the zemindar.

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Various rulings of this Court have been cited before us. It appears that there is a conflict of decisions in this Court on this point. The latest ruling—*Krishna Gobind Dhur v. Hari Churn Dhur* (1)—is in favor of the view taken by the lower Courts. It follows an earlier ruling—*Woomesh Chunder Goopto v. Raj Narain Roy* (2). Having considered these and the other cases to which we were referred, we are of opinion that the view taken by the lower Courts on this point is correct. For the reasons given in *Krishna Gobind Dhur v. Hari Churn Dhur* (1) we are of opinion that the present case is governed by Art. 144 of the Limitation Act; and that as the adverse possession of the defendant against the plaintiff commenced only on the termination of the *ijara* lease, within twelve years of the suit, the suit is not barred.

Another point has been raised before us, that the plaintiff was not at any rate entitled to *khas* possession.

I was under the impression when the case was being argued that the defendant set up a tenancy under both zemindaris: but even if it were so, the lower Courts would have been right in decreeing the suit, because it was not proved that the tenure was transferable. But Baboo Srinath Das, who appears for the appellant, informs us that the defendant alleged that the tenure was held under the defendant's zemindari only. In that view the question of transferability does not arise. The 8 annas share of the disputed land being found to be part and parcel of the zemindari, and the claim not being barred by limitation, there is no defence to the suit.

The lower Courts were therefore right in awarding a decree in favor of the plaintiff. We dismiss the appeal with costs.

K. M. C.

Appeal dismissed.

(1) I. L. R., 9 Calc., 367.

(2) 10 W. R., 15.